HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT APPEAL No. 1317 OF 2006

Between:

Visakhapatnam Port Trust,
Visakhapatnam rep. By its Chairman &another

..... Appellants

AND

G. Govinda Rao

.....Respondent

:: J U D G M E N T ::

Counsel for the appellants : Ms. V. Uma Devi

Counsel for the respondent : Shri G. Vidya Sagar

22nd December, 2006

Per G.S.SINGHVI, CJ

This appeal is directed against order dated 08.08.2006 passed by the learned Single Judge in Writ Petition No.1041 of 1995, whereby he set aside the punishment of reduction in rank imposed on the petitioner (respondent herein) and directed that he shall be entitled to arrears of pay from 07.03.1994 till date.

The respondent joined the service of Visakhapatnam Port Trust (hereinafter described as 'VPT') as Greaser on 19.04.1979. He was promoted as Motor Vehicle Driver with effect from 01.08.1981. Vide Memo dated 26.05.1992, Chief Mechanical Engineer, VPT and Disciplinary Authority (hereinafter described as 'the Disciplinary Authority') instituted an enquiry against the respondent under Regulation 10 of the Visakhapatnam Port Employees (Classification, Control and Appeal) Regulations, 1968 (for short 'the Regulations'). The following were the articles of charges framed against the respondent:

"**Article of Charge – I**

That the said Sri G.Govinda Rao, while functioning as Driver (MV) in M.V. Section has attended to duty in General shift on 20.05.1992 and was posted to work on ADH 6628 jeep.

At the commencement of the shift on the aforesaid day, Sri Govinda Rao has obtained a requisition and drew 10 liters of HSD oil for the said vehicle and shown the total HSD oil available in the vehicle as 11 liters in the vehicle log book. He made only two trips to general stores from MV Section in the forenoon, but not obtained the signatures of those used the vehicle in the log book. When checked the vehicle at about 13.00 hrs. on the day in question there

was no HSD oil available in the tank of the vehicle.

From the above, it is evident that Sri Govinda Rao pilfered 10 liters of HSD oil drawn by him for the said vehicle at the commencement of the shift.

By the above act, he exhibited gross misconduct unbecoming of a public servant and inasmuch as he failed to maintain absolute integrity.

Thus, he violated Regulation 3(1) of VPE's (C) Regulations, 1964.

Article of Charge - II

That the said Sri Govinda Rao who attended to duty in general shift on 20.05.1992, left the work spot unauthorisedly at about 13.00 hrs. leaving the vehicle (ADH 6628) on which he was posted in M.V. Section after making two trips with the vehicle to general stores in the forenoon of the aforesaid day. He applied for half day leave for 20.05.1992 A.N. on 21.05.1992 to cover the lapse committed by him.

From the above, it is evident that Sri Govinda Rao absconded from duty from 13.00 hrs. on the aforesaid day.

By the above act, he exhibited gross negligence, utter carelessness and lack of interest in performing his legitimate duties and inasmuch as he failed to maintain absolute devotion to duty.

Thus, he violated Regulation 3(1) of VPE's (C) Regulations, 1964.

Article of Charge - III

That Sri Govinda Rao, Driver (MV) was in the habit of tampering the speedometer and record in the log book as "MNW" (meter not working). Though the speedometer of the vehicle ADH 6628 on which he was posted was rectified twice on 21.12.1991 and 22.04.1992 prior to the above incident, he tampered the meter again and again and recorded as MNW in the log book.

From the above, it is evident that Sri Govinda Rao was habituated to tamper with the speedometer to avoid to enter the exact distance travelled in the log book and

thereby pilfer HSD oil to gain pecuniary advantage for himself.

By the above act, he exhibited gross misconduct unbecoming of a public servant and inasmuch as he failed to maintain absolute integrity.

Thus, he violated Regulation 3(1) of VPE's Regulations, 1964."

The Enquiry Officer submitted report dated 15.12.1993 with the finding that Charges No.1 and 2 have been proved against the delinquent and Charge No.3 has not been proved. The Disciplinary Authority accepted the enquiry report and issued notice dated 18.01.1994 to the respondent and called upon him to submit representation against the proposed penalty of reduction to the post of Greaser in the time scale of pay of Rs.1075-1580 with cumulative effect. The respondent filed reply dated 16.02.1994, wherein he challenged the findings recorded by the Enquiry Officer in respect of Charges No.1 and 2. He controverted the allegation of pilferage by stating that on 22.05.1992 i.e. two days after he left the vehicle, nine liters of HSD oil was found in the tank and this, by itself, was sufficient to disprove the charge. He also claimed that he had to leave duty on 20.05.1992 on account of sudden illness, and there was no justification to accuse him of having absconded from duty. Thereafter, the Disciplinary Authority passed order dated 07.03.1994 and confirmed the proposed penalty. The appeal preferred by the respondent was dismissed by the Chairman, VPT-cum-Appellate Authority (hereinafter described as 'the Appellate Authority'). For the sake of convenient reference, paragraphs 1

and 2 of order dated 07.03.1994 passed by the Disciplinary Authority and the last two paragraphs of order dated 23.06.1994 passed by the Appellate Authority are reproduced below:

"Order dated 07.03.1994

The undersigned has carefully considered the representation submitted by Sri G.Govinda Rao, Driver (MV)/MV Sec. vide reference 6th cited, in response to the show cause notice issued to him vide reference 5th cited proposing to impose on him the penalty of reduction to the post of Greaser (MV) on pay of Rs.1475/- in the time scale of pay of Rs.1075-1580/- with cumulative effect, and found the same not satisfactory.

The reasons offered by him in the representation are not convincing and hence not acceptable. He did not bring out any new points in the representation. The undersigned, therefore, comes to the conclusion to confirm the penalty proposed in the said show cause notice."

"Order dated 23.06.1994

The undersigned, having carefully considered the facts of the case and after perusal of the relevant records, finds that there are no convincing grounds to interfere with the orders passed by the Disc. Authority and rejected the appeal.

In the result, the appeal dt.9.4.1994 of Sri G.Govinda Rao is hereby rejected and the punishment awarded by the CME (Disc. Authority) is confirmed."

The respondent challenged the aforementioned orders in Writ Petition No.1041 of 1995 by contending that the enquiry held against him is vitiated due to violation of the provisions contained in the Regulations and the findings recorded by the Enquiry Officer are perverse, inasmuch as, the same are based on no evidence. He claimed that there was no pilferage of oil because after taking

10 litres of HSD oil, he had twice driven the vehicle to the stores. On the issue of leaving the vehicle in the afternoon of 20.05.1992, he pleaded that this happened because he was not well. In support of this contention, he relied on the certificate issued by the doctor. He also pleaded that the Disciplinary and Appellate Authorities did not apply their mind to the points raised in the reply to the show cause notice and the memorandum of appeal and no reason has been assigned by them for confirming the proposed punishment.

The learned Single Judge did not go into the legality of the enquiry proceedings and the findings recorded by the Enquiry Officer, but straightaway adverted to the merits of the findings recorded by the Enquiry Officer and opined that charge of pilferage of HSD oil cannot be treated as proved against the petitioner (respondent herein). Accordingly, the learned Single Judge quashed the order of penalty and ordered payment of salary to the respondent for the intervening period.

We have heard Ms. V. Uma Devi, learned counsel for the appellants and Shri G. Vidya Sagar, learned counsel for the respondent and perused the record. The prayer made by the petitioner in the writ petition was essentially for issuance of a writ of certiorari. The parameters for exercise of the High Court's power to issue a writ of certiorari are well defined. Such writ, order or direction can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals or quasi-judicial authorities. A writ can also be issued where in exercise of jurisdiction conferred on it, the Court or the Tribunal or quasi-

judicial authority acts illegally or improperly, i.e., it decides a question without giving an opportunity of hearing to the party affected by the order or where the procedure adopted by it is opposed to the principles of natural justice. However, it must be remembered that the jurisdiction of the High Court to issue a writ of certiorari is supervisory in nature and not appellate one. This necessarily means that the finding of fact reached by the inferior Court, Tribunal, etc., as a result of the appreciation of evidence, cannot be reopened or questioned in writ proceedings except when the judgment, order or award suffers from an error of law apparent on the face of the record. An error of law is one which can be discovered on a bare reading of the judgment, order or award under challenge along with the documents which have been relied upon by the inferior Court, Tribunal or quasi-judicial authority. An error, the discovery of which is possible only after a detailed scrutiny of the evidence produced by the parties and lengthy debate at the bar cannot be regarded as an error of law for the purpose of a writ of certiorari. A finding of fact recorded by an inferior Court or Tribunal or quasi-judicial authority can be corrected only if it is shown that in recording the said finding, the Court etc., had erroneously admitted inadmissible evidence and the same has influenced the impugned finding. Similarly, a finding of fact based on no evidence would be regarded as error of law which can be corrected by issuing a writ of certiorari. However, sufficiency or adequacy of the evidence relied upon by the inferior Court or Tribunal or quasi-judicial authority cannot be gone into by the High Court while considering the prayer for issue of a writ of

certiorari. Likewise, mere possibility of forming a different opinion on re-appreciation of evidence produced by the parties is not sufficient for issue of a writ of certiorari.

In **State of Orissa v. Bidyabhushan Mohapatra**[1], the Supreme Court considered whether the High Court can interfere with the order of punishment simply because finding recorded by the enquiry officer in respect of some charges is found to be vitiated by an error of law and whether it can go into the sufficiency and adequacy of punishment. While reversing the order of Orissa High Court, which had allowed the writ petition filed by the respondent, their Lordships of the Supreme Court observed:

> "But the Court in a case in which an order of dismissal of a public servant is impugned is not concerned to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanour established. The reasons which induce the punishing authority, if there has been an inquiry consistent with the prescribed rules, are not justiciable: nor is the penalty open to review by the Court. If the High Court is satisfied that if some but not all of the findings of the Tribunal were 'unassailable', the order of the Governor on whose powers by the rules no restrictions in determining the appropriate punishment are placed, was final, and the High Court had no jurisdiction to direct the Governor to review the penalty for as we have already observed the order of dismissal passed by a competent authority on a public servant, if the conditions of the constitutional protection have been complied with, is not justiciable. Therefore if the order may be supported on any finding as to substantial misdemeanour for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has

no jurisdiction if the findings of the inquiry officer or the Tribunal prima facie make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all it appears that there had been violation of the rules of natural justice."

In **State of A.P. v. Sree Rama Rao**[2], the Supreme Court indirectly reiterated the proposition laid down in **Bidyabhushan Mohapatra** (supra) and held:

"The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental inquiry against a public servant; it is concerned to determine whether the inquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the inquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of inquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the

departmental authorities are, if the inquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding under Article 226 of the Constitution."

In **Rly. Board v. Niranjan Singh**[3], the principle laid down in **Bidyabhushan Mohapatra** (supra) was reiterated. In **State of Madras v. G. Sundaram**[4], the Constitution Bench of the Supreme Court laid down the following proposition:

> "High Court, in the exercise of its jurisdiction under Article 226 of the Constitution, cannot sit in appeal over the findings of fact recorded by a competent Tribunal in a properly conducted departmental enquiry except when it be shown that the impugned findings were not supported by any evidence. It cannot consider adequacy of that evidence to sustain the charge."

In **State of A.P. v. C. Venkata Rao**[5], a three Judges Bench of the Supreme Court referred to the judgments of **Syed Yakoob v. K.S.Radhakrishnan and others**[6], **Bidyabhushan Mohapatra** (supra) and **Niranjan Singh** (supra) and observed:

> "In considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court need not be applied. Even if that rule is not applied by a domestic tribunal in any inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the

authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal."

(Emphasis supplied)

In **B.C. Chaturvedi v. Union of India**[7], the Supreme Court, while considering the appellant's challenge to the order of punishment passed as a sequel to the departmental enquiry held against him, highlighted the limited scope of judicial review by making the following observations:

"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily

correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of that case."

In **Apparel Export Promotion Council v. A.K. Chopra**[8], the Supreme Court again considered the High Court's power to

interfere with the disciplinary proceedings and held:

> "It is a settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to reappreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on *no evidence* or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty.
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> Further, it is a well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the court, in exercise of the power of judicial review, is *not* concerned with the *correctness* of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must

be remembered, is directed not against the decision, but is confined to the examination of the decision-making process.

Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority."

We may now advert to the order under challenge. In first two paragraphs, the learned Single Judge briefly noticed the subject matter of challenge and facts leading to the imposition of punishment by the Disciplinary Authority and dismissal of the appeal and review petition. The learned Single Judge then noted the plea of the respondent that on 20-5-1992 he got filled 10 litres of HSD oil into the tank of the vehicle; that he made some trips and in the afternoon he left the place and went to his house because he was suffering from fever; that at 13-00 hours, the other driver filled

5 litres of HSD oil; that on 21-5-1992, the vehicle was not operated and that on the morning of 22-5-1992, 9 litres of HSD oil was available. In the next three paragraphs, the learned Single Judge took cognizance of the contentions of the respondents and concluded that the charge of pilferage of HSD oil is not proved and that even if the second charge is treated as proved, the

punishment is arbitrary and excessive. It is, thus, clear that the learned Single Judge not only reviewed the factual matrix of the case, but also re-evaluated the evidence and concluded that the punishment imposed on the respondent was unjustified. The manner in which the learned Single Judge dealt with the issues raised in the writ petition shows that he was seeking to exercise appellate jurisdiction on the findings recorded by the Enquiry Officer. By doing so, the learned Single Judge clearly transgressed the parameters laid down by the Supreme Court for exercise of the power of judicial review in such matters. In our considered view, it was not open to the learned Single Judge to re-evaluate the evidence produced during the inquiry and overturn the findings recorded by the Enquiry Officer, which, as mentioned above, were accepted by the Disciplinary Authority.

Notwithstanding the above conclusion, we are convinced that the orders passed by the Disciplinary Authority as well as the Appellate Authority are vitiated due to violation of the Regulations framed under Section 28 of the Act and the rules of natural justice.

Clause 8 of the Regulations specifies the minor as well as the major penalties, which can be imposed on an employee of VPT. Clause 10 contains the procedure for imposing major penalties. The various steps envisaged in this clause include preparation of the statement of charges, appointment of Enquiry Officer, recording of evidence by the Enquiry Officer and submission of enquiry report. Sub-clause (21) of Clause 10 authorises the specified Disciplinary Authority to impose any of

the minor penalties. Sub-clause (23) postulates preparation of enquiry report. Clause 11 enumerates the powers of the Disciplinary Authority and Clause 24 regulates consideration of appeal. These clauses, which have bearing on the issue being decided by us, read as under:

> "**11. Action on the inquiry report:**
>
> (1) The Disciplinary Authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold further inquiry according to the provisions of Regulation 10 as far as may be.
>
> (1a) The Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any held by the Disciplinary Authority or where the Disciplinary Authority is not the inquiring authority, a copy of the report of the inquiring authority to the employee, who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within 15 days, irrespective of whether the report is favourable or not to the employee.
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> (1b) The Disciplinary Authority shall consider the representation, if any submitted by the employee before proceeding further in the manner specified in sub-regulations (2) to (4).
>
> (2) The Disciplinary Authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.
>
> (3) If the Disciplinary Authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clauses (i) to (v) of Regulation 8 should be imposed on the employee, it shall, notwithstanding anything contained in Regulation 12,

make an order imposing such penalty.

Provided that in every case where it is necessary to consult the Central Government, the record of the inquiry shall be forwarded by the Disciplinary Authority to the Central Government for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the employee.

(4) If the Disciplinary Authority, having regard to its findings on all or any of the articles of charge and on the basis of the evidence addressed during the enquiry, is of the opinion that any of the penalties specified in clauses (vi) to (x) of Regulation 8 should be imposed on the employee, it shall make an order imposing such penalty and it shall not be necessary to give the employee any opportunity of making representation on the penalty proposed to be imposed.

Provided that in every case where it is necessary to consult the Central Government, the record of the inquiry shall be forwarded by the Disciplinary Authority to the Central Government for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the employee.

24. Consideration of Appeal:

In the case of an appeal against an order of suspension, the Appellate Authority shall consider whether in the light of the provisions of Regulation 7 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in Regulation 8 or enhancing any penalty imposed under the said Regulation, the Appellate Authority shall consider –

a) whether the procedure laid down in these Regulations has been complied with, and if not, whether such non-compliance has resulted in the failure of justice;

b) whether the findings of the Disciplinary Authority are warranted by the evidence on the record, and

c) whether the penalty or enhanced penalty imposed is adequate, inadequate or severe,

and pass orders –

i) confirming, enhancing, reducing or setting aside the penalty, or

ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case,

Provided that –

i) The Government shall be consulted in all cases where such consultation is necessary;

ii) If such enhanced penalty which the Appellate Authority proposes to impose is one of the penalties specified in clauses (vi) to (x) of Regulation 8 and an inquiry under Regulation 10 has not already been held in the case, the Appellate Authority shall, subject to the provisions of Regulation 15, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Regulation 10 and thereafter, on a consideration of the proceedings of such inquiry and make such orders as it may deem fit;

iii) If the enhanced penalty, which the Appellate Authority proposes to impose, is one of the penalties specified in clauses (v) to (ix) of Regulation 8 and an enquiry under Regulation 10 has been held in the case, the Appellate Authority shall make such orders as it may deem fit after the appellant has been given a reasonable opportunity of making a representation against the proposed penalty.

iv) No order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be in accordance with the provisions of Regulation 12, of making a representation against such enhanced penalty.

3) In an appeal against any other order specified in Regulations 19 to 21, the Appellate Authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable."

An analysis of Clause 11 shows that if the Disciplinary Authority intends to impose any of the minor penalties specified in Regulation 8, then on receipt of the enquiry report, it can straightaway pass the order of punishment. If the Disciplinary Authority intends to impose any of the major penalties, then it is required to consider the enquiry report and record its findings on all or any of the articles of charges and consider the representation, if any made by the delinquent employee. The requirement of such consideration has been introduced in the form of sub-clause (1b) of Clause 11. This sub-clause obligates the Disciplinary Authority to apply its mind to the record of enquiry and the representation, if any submitted by the delinquent and then pass the final order. Sub-clause (2) of Clause 24 casts a duty on the Appellate Authority to consider whether the procedure laid down in the Regulations has been complied with, and if not, whether such non-compliance has resulted in failure of justice; whether the findings of the Disciplinary Authority are warranted by the evidence on the record, and whether the penalty or enhanced penalty imposed is adequate, inadequate or severe, and then pass order confirming, enhancing, reducing or setting aside the penalty or remitting the case to the Disciplinary Authority with such a direction as the Appellate Authority may deem fit in the circumstances of the case.

In our opinion, the above mentioned two clauses represent

statutory impediment of two facets of the rules of natural justice i.e. every quasi-judicial authority must apply objectively its mind to the material produced before it and assign reasons in support of its conclusions/decision. To put it differently, the Disciplinary Authority is required to deal with the points raised in the representation/explanation and assign reasons, howsoever briefly, for accepting or rejecting the same and the Appellate Authority is required to consider whether or not the enquiry has been held in accordance with the Regulations and, if there is a violation of the Regulations, whether the cause of the delinquent has been prejudiced. The Appellate Authority is also duty bound to examine the findings recorded by the Disciplinary Authority and the quantum of punishment and then pass appropriate order.

The necessity of recording reasons by a quasi-judicial authority and even an administrative authority, which is entrusted with the task of deciding the rights of the parties or passing an order affecting any person, has been judicially recognized in **Harinagar Sugar Mills v. Shyam Sundar**[9], **M.P.Industries Limited v. Union of India**[10], **Bhagat Raja v. Union of India**[11], **Mahavir Prasad Santoshkumar v. State of U.P.**[12], **Travancore Rayons v. UOI**[13], **Messrs Ajanta Industries v. Central Board of Direct Taxes, New Delhi**[14], **Messrs Siemens Engineering & Manufacturing Company v. Union of India**[15], **S.N. Mukherjee v. Union of India**[16], **Charan Singh v. Healing**

Touch Hospital[17] **State of Punjab v. Bagh Singh**[18], **State of Orissa v. Dhaniram Luhar**[19], **State of Rajasthan v. Sohan Lal**[20], **Cyril Lasrado v. Juliana Maria Lasrado**[21], **Mangalore Ganesh Beedi Works v. CIT**[22], **Manorama Sachan v. Lucknow Development Authority**[23] and **Testeels Limited v. N.M. Desai, Conciliation Officer and another**[24].

If, in the light of the above noted propositions, orders dated 7-3-1994 and 23-6-1994 are scrutinized, it becomes clear that neither the Disciplinary Authority nor the Appellate Authority directed their attention to the relevant statutory provisions and their duty to pass speaking orders. Instead, both the authorities passed cryptic orders using stock phrases. Why the Disciplinary Authority did not accept the plea of the respondent that charge of pilferage of HSD oil should be treated as not proved because he made two trips to the stores and left the vehicle on 20-5-1992 because of illness, is not discernible from order dated 7-3-1994. On its part, the Appellate Authority did not consider the appeal in the light of sub-clause (2) of Clause 24 of the Regulations and arbitrarily dismissed the appeal by observing that there are no convincing grounds to interfere with the order of punishment. The manner in which the appeal of the respondent was dismissed is ex-facie contrary to the law laid down by the Supreme Court in **Ram Chander v. Union of India**[25].

We are further of the view that the failure of the Disciplinary Authority to objectively consider the representation made by the

respondent has resulted in substantial failure of justice and the impugned orders are liable to be quashed by applying the tests laid down by the Constitution Bench of the Supreme Court in **Managing Director, ECIL vs. B. Karunakar**[26].

In the result, the appeal is disposed of in the following terms:

1) The order of the learned Single Judge is set aside.
2) Orders dated 07.03.1994 and 23.06.1994 passed by the Disciplinary Authority and the Appellate Authority are declared illegal and quashed.
3) The Disciplinary Authority shall re-consider the representation made by the respondent along with additional representation, which he may submit within next one month, and then pass appropriate order assigning cogent reasons.
4) If the respondent feels aggrieved by the fresh order, then he shall be entitled to avail appropriate departmental or legal remedy.

G.S.SINGHVI, CJ

22nd December, 2006

C.V. NAGARJUNA REDDY, J

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[1] AIR 1963 SC 779
[2] AIR 1963 SC 1723
[3] AIR 1969 SC 966
[4] AIR 1965 SC 1103
[5] AIR 1975 SC 2151
[6] AIR 1964 SC 477
[7] (1995) 6 SCC 749

[8] (1999) 1 SCC 759
[9] AIR 1961 SC 1669
[10] AIR 1966 SC 671
[11] AIR 1967 SC 1606
[12] AIR 1970 1302
[13] AIR 1971 SC 862
[14] AIR 1976 SC 437
[15] AIR 1976 SC 1785
[16] AIR 1990 SC 1984
[17] (2000) 7 SCC 668
[18] (2004) 1 SCC 547
[19] (2004) 5 SCC 568
[20] (2004) 5 SCC 573
[21] (2004) 7 SCC 431
[22] (2005) 5 SCC 75
[23] (2005) 9 SCC 425
[24] AIR 1970 Gujarat 1
[25] AIR 1986 SC 1173
[26] (1993) 4 SCC 727